

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, NOVEMBER 19TH, 2024
3RD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Joel Hildebrandt (Acting Chair), Leo Splonskowski,

Members Absent: Ezra Baer, Travis Bouton

Others Present: Matt Jacobson, Brian Melton, Erika Franck, Rita Rueckert, Luke Lippert of Central Specialties (by phone), Guy Nelson (by phone), Dana Berg, Annissa Berg, Karena Berg, Bradey Berg, Miles Nelson, Jacob Murack, Sheila Murack

The meeting was called to order at 5:44 PM by Acting Chair Joel Hildebrandt.

APPROVAL OF AGENDA:

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the Board approved the meeting Agenda.

APPROVAL OF MINUTES OF OCTOBER 15TH, 2024:

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the Board approved the Minutes from October 15th, 2024.

PUBLIC HEARING(S):

CENTRAL SPECIALTIES, INC. – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance to mine within the 100' property line setback at 29106 147th Ave S Hawley, MN 56549, Parcel ID: 28.013.2300, in the SW1/4NW1/4 and NW1/4SW1/4 of Section 13, Township 137N, Range 44W, Tansem Township.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the public hearing was opened.

Matt Jacobson, Planning & Zoning Director, advised the request is for a variance to the 100-foot property line setback. Owner of the parcel is Diane Blomster.

2045 Clay County Comprehensive Plan Goals reviewed:

Natural Resources and the environment: Aggregate Resources

1. Recognize the importance of aggregate resources to Clay County and the region.
 - a. Implement policies and standards to ensure sound stewardship of aggregate resources and natural biotic resources.
2. Foster a balanced approach to aggregate resource extraction that is compatible with the natural resources and the rural character of Clay County.

- a. Consider the cumulative impacts of existing nearby mining operations for new or expanding operations on the environment, agricultural lands, residential areas and transportation infrastructure.

The Variance process as outlined in Clay County Code Section 8-6-16B-31 requires written consent from the adjacent landowner, which protects the rights of adjacent property owners from encroachment.

Subject property is zoned Agricultural General (AG), Resource Protection – Aggregate (RP-Agg) and Resource Protection – Biological (RP-Bio). There is a prior Variance from 2006 granted for the property line to the north within 100 feet. There were Conditional Use Permits for mining, as well as asphalt batch plant, in 2002 and 2007.

This Variance request is for the west property line. Applicant has identified the practical difficulty that they would lose access to valuable aggregate materials that are present within the setback. Since this is an after-the-fact and the mining has already occurred, they would need to reclaim the areas mined within the requested setback.

The property to the northwest of this parcel is owned by the Minnesota Department of Natural Resources (MN DNR). The adjacent parcel at the southwest corner is owned by Miles Nelson. This request is only for the property line setback which is property owned by Diane Blomster. The property lines for the MN DNR and the Miles Nelson properties would not be part of the variance request and those setbacks would not be impacted.

After the fact Variances have the following criteria to review, pursuant to the 2009 Minnesota Supreme Court Stadsvold ruling:

1. Whether the construction was complete.
2. Whether there are similar structures in the area.
3. The benefit to the municipality of enforcement, compared to the burden on the applicant if compliance was required.
4. Whether the violation was intentional or unintentional.

Applicant Luke Lippert with Central Specialties participated via telephone. He stated that Central Specialties owns mineral rights on the property to the west (parcel 28.014.4800) and will be requesting a variance for that parcel line sometime in the future.

Guy Nelson participated via telephone and asked if there would be a 100' property line buffer on the south property line and Director Jacobson confirmed there would be a 100-foot property line on the south border that would stay in place.

Miles Nelson asked if he as an adjacent landowner, would be required to give approval. Director Jacobson advised that this variance request is only for the west property line. Mr. Nelson then asked what if they would start mining on the south side? Director Jacobson advised that the 100' setback would remain in place because these are separate properties.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the public hearing was closed.

The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested Variance.

Minimum staff recommended Conditions include:

1. Mining activities can only occur within the 100-foot setback of the property line shared with Parcel ID 28.014.4800, the SE ¼ NE ¼ and NE ¼ SE ¼ of Section 14 Township 137N, Range 44W.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the Board of Adjustment *GRANTED* the Variance with the following condition:

1. Mining activities can only occur within the 100-foot setback of the property line shared with Parcel 28.014.4800. the SE ¼ NE ¼ and the NE ¼ SE ¼ of Section 14, Township 137N, Range 44W.

JACOB MURACK – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the road centerline setback for a residence on Parcel ID: 10.036.4000, in the SW1/4 of the SE1/4, Section 36, Township 139N, Range 47W, Glyndon Township.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the public hearing was opened.

Matt Jacobson, Planning & Zoning Director, reviewed the following goals from the 2045 Clay County Comprehensive and Transportation Plan:

Transportation – System:

1. Maintain and operate an accessible, safe and efficient transportation system for the movement of people and goods throughout Clay County.

Zoning on this property and all immediately adjacent properties are zoned Agricultural General (AG). The property is currently used as Agricultural and the entire 160-acre parcel has drain tile. There is one older, dilapidated ag building and a small shelter belt in the southwest corner of the parcel.

Applicant is requesting a variance to the road centerline setback for a residence that would encroach approximately 75 feet into the 125-foot road centerline setback of 15th Avenue North. The 50-foot setback represents a 60% reduction of the setback so the proposed residence would be approximately 50 feet from the centerline of the road and 17 feet from the right of way.

The shelter belt and the old ag building line up at almost exactly 125 feet from the road centerline setback. An aerial map was reviewed showing the proximity of a residence to the road right of way.

Staff had the following comments regarding this request:

- Applicant's request, if granted, would place the front of the dwelling approximately 17 feet from the road right of way.
- The Applicant contends the location of the shelterbelt, drainage ditches and drain tile impact the placement ability of the dwelling and prevents meeting the 125-foot setback.
- Placement of a dwelling on the south side of the shelterbelt would provide the best protection from wind and snow.
- Placing the dwelling 50 feet from the road centerline would not be the minimum variance necessary to alleviate the practical difficulty as there is approximately 75 feet between the proposed 50-foot setback and the shelterbelt. (*Additionally, the presence or need to remove

trees to construct a dwelling does not represent a practical difficulty in this case as many of these trees are ash, cottonwood and poplar. There is also a small clearing within the shelterbelt.)

- The 50-foot setback is also right on top of a drain tile line. The applicant states that this is not an issue; however, there is ample space between this setback and the tree line.
- This area of the property would be best for a residence in order to protect the site from the elements and preserve farmland. However, the request exceeds the minimum variance necessary to alleviate any practical difficulties.

Director Jacobson emphasized that there needs to be consideration given to the question: Is this Variance request the minimum necessary to alleviate the practical difficulty?

Applicant Jake Murack advised he had talked to the Glyndon Township last week and they did not have any objections. Applicant provided a signed letter from the Township advising same. The Applicant is not concerned about the proximity of the house to the roadway if the Variance was approved. Applicant provided a letter which identifies the following Practical Difficulty:

The field has drain tile installed and there are two rather deep natural drainage ditches on the north side of the trees following the east and west direction and another ditch running north and south on the east side of the trees and a pump for the drain field. These areas would need to be avoided. The private well would need to be put as far away from the drain field pump and ditches as possible. The ditches need to be avoided as they hold a good amount of natural water runoff. These obstacles would also need to be avoided for the sewer setup. Ellingson Drainage has advised the Applicant there are zero issues of building on or near the drain tile site. The grove of trees would provide for good shelter from the elements and the intent is to preserve as much of this tree claim as possible.

Leo Splonskowski asked Applicant Murack if he has had any discussion with the County Highway Department regarding this request. He pointed out that the County Highway Department may have concerns regarding snow removal with a residence that close to the road right of way. Mr. Splonskowski also asked if this building line is basically at the top slope of the ditch and if the Applicant knew if there were power or utility lines running through this ditch. Applicant did not believe there were utility lines.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the public hearing was closed.

The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested Variance.

After discussion regarding the Findings of Fact and Order, there was a motion by Leo Splonskowski, seconded by Dennis Loock, to reopen the public hearing.

Applicant stated that the ditch is relatively flat and they are trying to preserve as much of the tree line as possible. Mr. Splonskowski pointed out that snow removal and ditch mowing by the Township/County would put the residence in line to receive damage from flying snow/ice/sticks/rocks. The Applicant was asked if 90 feet would be adequate; Director Jacobson measured out a 90-foot setback. Applicant stated he felt this could possibly be acceptable. Applicant amended his request to a 90-foot setback.

On motion by Dennis Loock, seconded by Leo Splonskowski, and unanimously carried, the public hearing was again closed.

The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested Variance.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the Board of Adjustment *GRANTED* a 90-foot road centerline setback.

BRADEY BERG – REQUEST FOR VARIANCE

The applicant is seeking approval of an after-the-fact variance to the shared well standard for a temporary second dwelling on a parcel at 13029 300th St S, Pelican Rapids, MN 56572 in part of the SE1/4 of the NE1/4, Section 12, Township 137N, Range 44W, Tansem Township.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the public hearing was opened.

Matt Jacobson, Planning & Zoning Director, advised that the Applicant has a hearing later this evening for the Planning Commission regarding a IUP for a 2nd dwelling on the parcel.

Goals reviewed from the 2045 Clay County Comprehensive and Transportation Plan include:

Housing Goals and Objectives

1. Support additional options that give people in all life states and of all economic means viable choices for safe, stable and affordable homes.

Land Use – Residential Goals and Objectives

- 3 Recognize the diversity of living and working arrangements in the unincorporated areas of Clay County.
 - b. Recognize multi-generational and temporary agricultural working living arrangements by permitting accessory dwelling units on properties that can adequately provide for water and sewer.

The property is zoned Agricultural General (AG), Resource Protection – Aggregate (RP-Agg), and Resource Protection – Biological (RP-Bio). The parcel is primarily used as grazing land and for residential purposes. There is a 780 sq ft single family home, and a 950 sq ft manufactured home, a 2,720 sq ft dairy barn, a 320 sq ft milking parlor, and a 3,200 sq ft outbuilding on the property.

The 2012 Clay County Development Code sets out the following guidelines for placing a second residence on a parcel:

2. A second dwelling on the parcel to be used by parent(s), grandparent(s), children, sibling(s) by blood, marriage, adoption or other special relationships consistent with the purpose that meets the following standards:
 - a. Said dwelling must be a manufactured home (single or double-wide)
 - b. Dwelling must not be placed on a permanent foundation
 - c. Dwelling must have a septic system that meets County Health requirements
 - d. *Dwelling must share a common well with the principal dwelling***
 - e. No more than one (1) additional dwelling shall be allowed on a parcel
 - f. Parcel must be at least five (5) acres in size

The Applicants Bradley Berg and Dana Berg initially intended to split this parcel. However, the parcel is technically in two separate quarter-quarters and due to current financing conditions, they are unable to complete the split at this time.

The 2009 Minnesota Supreme Court Stadsvold decision regarding After-The-Fact Variances was reviewed.

Leo Splonskowski confirmed that the second well was already in place and Director Jacobson confirmed it was. Due to the distance from the first residence, and also needing water for livestock, the second well was installed. The parcel otherwise meets the rest of the criteria for a second residence on a parcel.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the public hearing was closed.

The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested Variance.

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the Board of Adjustment GRANTED the Variance request with the following condition:

- 1. Well must meet all required setbacks (isolation distances) in accordance with Minnesota Rules, Chapter 4725.**

UNFINISHED BUSINESS:

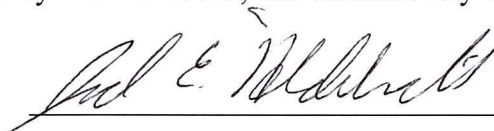
None.

NEW BUSINESS:

- Director Jacobson advised that the first four chapters of the Ordinance are available for review online. A link has been sent to all of the Study Review Committee and Planning Commission members. Remaining chapters are expected to be available for review in early December 2024.
- The 2025 Meeting Schedule has been created and a copy was distributed to each Board of Adjustment member.
- Leo Splonskowski inquired about the upcoming change of Chair with Ezra Baer being elected as a County Commissioner. Director Jacobson advised Vice Chair Joel Hildebrandt will chair the meetings until a new Chair is elected at the February Planning Commission meeting.

ADJOURNMENT:

On motion by Leo Splonskowski, seconded by Dennis Loock, and unanimously carried, the meeting was adjourned at 6:52 PM.



Joel Hildebrandt – Acting Chair
Clay County Board of Adjustment